IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 440 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SOMABHAI KALUBHAI PATEL & 2 - Appellant(s)
Versus
GAMBHIRSINH ISHVERSINH GOHIL - Defendant(s)

==========

Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1 - 3.
MR RR MARSHALL for Defendant(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 16/01/2007

ORAL JUDGMENT

1. The learned advocate for the appellants is permitted to transpose appellant no. 3 as respondent no. 2. It is stated by Mr. S.B. Parikh learned advocate that

he has instructions to appear on behalf of respondent no. 2 and he undertakes to file his appearance on or before 19th January, 2007.

2. This is an appeal filed under Section 110-D of the Motor Vehicles Act, 1939 by the original opponents of MACP No. 462 of 1983. The said petition was decided and disposed of by MACT [Auxi.] at Surat by the judgment and award dated 11th August, 1989. By the said award, respondent no. 1 who was original applicant before the Claims Tribunal has been awarded a sum of Rs.57,000=00 together with interest thereon at the rate of 12% per annum from the date of the petition till realization and proportionate costs, by way of compensation for the injuries received by him in a vehicular accident which took place on 23rd March, 1981 at about 11:00 a.m.

3. According to respondent no. 1 on that day he was proceeding on foot on Surat-Kadodara road. He was walking on the left side of the road. When he reached near sign board of Puna patia, appellant no. 1 who was driving his vehicle namely, Matador bearing registration no. GTT 5278 in a rash and negligent manner, dashed against him. As a result of the same, he sustained serious injuries on both the legs and other parts of the body. He was immediately

removed to Surat General Hospital where he was treated as indoor patient. According to him, the hospitalization was for more than six months. He, therefore, filed the aforesaid petition for claiming compensation of Rs. 1 lakh. The claim was resisted by the insurance company i.e., present respondent no. 2 by filing written statement at Exh. 12. The insurance company denied that the accident was caused by Matador bearing registration no. GTT 5278 on Surat-Kadodara road. It also denied the rest of the averments made by respondent no. 1. So far as opponent no. 2 is concerned, he filed written statement at Exh.76, which was on similar line.

4. The parties led evidence before the Claims Tribunal. On the basis of the material produced before it, the Claims Tribunal arrived at a conclusion that it was Matador bearing registration no. GTT 5278 which was responsible for causing the accident. According to the Claims Tribunal, appellant no. 1 drove the vehicle in a rash and negligent manner. As a result of the same, the accident occurred causing serious injuries to respondent no. 1. So far as the quantum is concerned, the Claims Tribunal considered various items under which the compensation was claimed and ultimately awarded a sum of Rs.57,000=00 together with costs and interest as stated

above. However, the Claims Tribunal also held that so far as respondent no. 2 insurance company is concerned, its liability was limited to the extent of Rs.50,000=00 only. Hence, this appeal. Originally this appeal was jointly filed by all the opponents of the main petition namely, the driver, owner and insurance company of the Matador. However, the insurance company has now been transposed as respondent and the appeal is prosecuted only by present appellants no. 1 and 2 i.e., the owner and the driver.

5. Mr. R. H. Mehta learned advocate for the appellants has advanced only one submission. It is to the effect that there was no reliable evidence to establish that the vehicle namely Matador bearing registration no. GTT 5278 was involved in the accident. According to him, there was no F.I.R., lodged in connection with the incident. Further the witness who saw the incident happened to be a person residing in the locality of respondent no. 1 and it was in his evidence that the offending vehicle, namely vehicle bearing registration no. GTT 8685 belonging to Vedchhi Seva Pradesh Committee has been involved in the accident. According to Mr. Mehta, the Tribunal has committed error in holding that appellant no. 1 was negligent in driving and appellant no. 1 and respondent no. 2 were responsible for

satisfying the award of compensation.

6. He has not advanced any other submission. I have carefully considered the submission advanced by Mr. Mehta. I have also perused the record and proceedings of the case. It clearly appears that respondent no. 1 sustained injuries in a vehicular accident which took place on 23rd March, 1981 on Surat-Kadodara road. The disputed question is vehicle bearing registration no. GTT 5278 was responsible for causing the accident. Mr. Mehta has advanced the aforesaid submissions giving reasons why the say of appellants no. 1 and 2 should not be believed. It appears that though according to the appellants and respondent no. 2 it was vehicle belonging to Vedcchi Seva Pradesh Committee bearing registration no. GTT 8685 which had caused the accident, no effort has been made to implead the owner, and insurance company of the said vehicle in the proceedings. Except a bare say, nothing has been produced on the record which substantiated their say namely that Matador was not involved, but vehicle bearing registration no. GTT 8586 was involved in the accident. It is true that in spite of the accident, no F.I.R., has been lodged. However, the same cannot be the sole ground for rejecting the application or plea of respondent no. 1 because the accident has been deposed to

by eye witness who has been examined before the Claims Tribunal by respondent no. 1. Merely because the said person happened to reside in the same locality wherein the claimant lived, would not render his evidence doubtful. His evidence is very clear on this aspect. If that be so and when there is evidence of respondent no. 1 as well as eye witness giving detailed account of the manner in which the accident took place, the same cannot be discarded easily. It may be noted here that, had the other vehicle been involved in the accident, the appellants would have certainly tried to gather the details and would have sought permission to implead the driver of the said vehicle as party to the proceedings. Nothing has been done. In view of the same and for the reasons assigned by the Claims Tribunal, it appears that the finding of the Claims Tribunal is just and proper and it cannot be disturbed.

7. So far as the compensation is concerned, the judgment shows that the Tribunal has discussed all the material aspects and has decided that respondent no. 1 deserves to have compensation of RS.57,000=00 together with costs and interest. I have closely perused the said discussion and it appears to be just and proper. The appellants have not challenged the quantum of

compensation. It appears from the record that upon deposit of the amount by the insurance company and the balance amount by the insured, the original claimant i.e., respondent no.1 has been permitted to withdraw a sum of Rs.35,000=00 and the balance amount to be deposited in any Nationalized Bank for a period of one year. If the said amount has not already been withdrawn by respondent no. 1 the Claims Tribunal may after proper verification, hand over the amount together with accrued interest, by A/c. Payee cheque to respondent no. 1.

8. In view of the same, I do not propose to discuss that issue in detailed. The appeal therefore, has, no merits and it is dismissed.

R & P to be re-transmitted to the Tribunal forthwith.

[Akshay H. Mehta, J.]

/phalguni/